

September 28. 1748.

17.

R E P L I E S



F O R

Sir *John Houstoune*, Baronet,

T O

The Answers for Mrs. *Eleonora Cathcart*.

IT is with the utmost Regret and Concern, that the Defender must again appear in Court, laid under a Necessity, in Defence of his Honour and Reputation, to rake into domestick Life, to propal the grossest Abuses committed by the Person in the World whose Faults he was most willing to have concealed. But however disagreeable the Task is, Sir *John* has this Consolation, that the Court and the World will see that he has been forced into it; and the Pursuer has herself and her Advisers only to blame, who, without attempting, at least giving Time, for settling Matters by a private voluntary Accommodation, took Advantage of the Defender's Absence in a distant Country, to load him with a most scandalous Libel; which was even printed, and dispersed industriously, in order to create an Impression, and asperse Sir *John's* Character; and even proceeded to take Proof *ex parte*, until, upon Application to the Court of Session, an Injunction was obtained, that the Proof taken should not be disclosed, but sealed up, until Sir *John* should have Time to cross-question the Witnesses adduced by the Pursuer.

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The Libel itself is apparently of an extraordinary Nature : For, long as it is, it sets out but few Circumstances that could in any sort be the Foundation of a Process of this Nature ; but amply rambles into a Variety of minute Circumstances, below the Solemnity or Seriousness of such a Process, evidently with no other Intention, than to expose the Defender's Character, as a Person void both of Understanding and Humanity, and styles him in the Front of it as the Tyrant and Tormentor of his Wife.

The Libel happens, however, fortunately for the Defender, to be set out in Circumstances, that are not only incredible, but contradictory to one another. In *p. 7.* of the printed Copy of the Libel, the Pursuer is said, at the Defender's Desire, to have wrote Letters to her Friends, accusing and loading herself with all the Guilt that the Defender in his blackest Moments could devise to lay to her Charge : A Circumstance which of itself can hardly be credited to have been done by any Person, when the Fault, as she pretends, lay so much the other way. There is no Person of Understanding who could have been induced to do this, unless under the most imminent Danger ; which is not so much as pretended ; for it is only said in the Libel, that the Defender insisted she should do so.

It will be found in the Event, that the Letters of this sort were not by Inducement from the Defender, but from a Sense of her own Guilt : For it will appear, that she is even her own Accuser, in full as strong Terms, in a Variety of Letters, when she could not be supposed under the Defender's Influence, being then at many hundred Miles Distance from him.

The Libel says, *p. 9.* that, upon her coming to Scotland, *her very Looks were more powerful than a thousand Witnesses, to prove the Usage she had met with :* Notwithstanding of which, she carefully concealed every thing that might reflect upon Sir John, from even her nearest Friends.

It is not easy to tell what may create a Variation in one's Looks ; and therefore it is not so pregnant a Proof of bad Usage as the Libel would have it to be. Sullenness, Discontent, bad Humour, Remorse, and Sense of Guilt, have a very powerful Effect upon the Countenance.

Countenance. But as to the Allegation of her having carefully concealed from even her nearest Friends every thing that might reflect upon Sir *John*, it is not very consistent with what is set forth in the Libel at the Foot of *p. 7.* " That she seized an Opportunity of writing a Letter to her Grandmother, and another to a Gentleman, explaining in these Letters in what Manner the former had been obtained," wherein she loaded herself with such Guilt. This was surely not concealing every thing that might reflect upon Sir *John*, but loading him with the greatest Degree of Tyranny, viz. that he should have influenced the Pursuer to load herself with false Guilt.

In the Libel, *p. 10.* it is said, that while the Pursuer was in *Scotland*, upon Sir *John's* requiring her Attendance, she went over to him to *Portici* in *Italy*, and even at a Time when one was sent over to bring away Miss *Cathcart* her Sister from him; and if it is true what is set forth in the Libel, of the Usage she met with from the Defender immediately after her Marriage, in her Journey to *London*, and afterwards, in her Journey and Voyage towards *Lisbon*, at *Lisbon*, at *Pisa* and *Calci* in *Italy*; where it is said, that Sir *John* proceeded to beat, bruise and blood her, and put her in the utmost Danger of her Life: it is submitted to the Court and the World, whether it is credible that she would have chused to have returned to stay with Sir *John* alone, in so distant a Country, where she must have been without any Help or Assistance; or whether her Relations, who are known to be very careful, both of their own Interest, and of that of any Person who is connected with them, would have suffered her to have done so; especially that it is owned, that she had formerly acquainted her Friends of the Circumstance of Sir *John's* compelling her to write Letters loading herself with all imaginable false Guilt?

It is natural to suppose, that nothing could have induced her to return, but a Sense of her former Guilt and Misconduct, Shame and Remorse, with some Qualms of Repentance, and an Endeavour to see if she could rectify Matters by better Behaviour for the future: For indeed it was often her Way, to confess her Faults, and

and to profess a Repentance; which nevertheless was always of short Continuance.

There is another Circumstance in the Libel, p. 11. which in every body's Eyes must tend to justify Sir *John*, to wit, As Miss *Cathcart* was going away, Sir *John* insisted with the Pursuer, that she should write for some Lady amongst her Friends and Acquaintances, to come over to *Italy*, and stay with her; and that she having proposed to Sir *John* to write for his Sister, or some of his own Relations, he refused it, and insisted upon his former Proposal of her writing for one of her own Relations: For if her Usage was so barbarous from Sir *John*, it is not likely that he would have refused his own Sister as her Companion; who it might be thought would be the most favourable Witness and Judge of his Actions; and that he should have insisted for a Relation of the Pursuer's, who could not have failed to have confirmed the alledged barbarous Usage of the Pursuer.

The Truth is, Sir *John* wanted always one of her own Relations to be about her, to whose Observation he was willing to submit his whole Conduct towards the Pursuer; and whose Influence he thought might be the stronger with her, towards bringing her to a better Behaviour, and a more peaceable Disposition of Mind.

Immediately in the same Page of the Libel there follows a most curious Story, very becoming a Libel of this sort, about *Johnny Schaw* and a Dog; which the Libel says the Pursuer was forced by Sir *John* to write for, under the usual Certification, as the Libel expresses it, that unless this *Schaw* and the Dog were sent over between and a Day certain, the Pursuer was to be turned out of Doors. This is certainly at any rate setting Sir *John* in a strange Light; but to alledge, that he compelled the Pursuer to write a Variety of Letters thus exposing himself, is beyond all Credibility. And what must the World think of such a Circumstance being thrown into a Libel of this sort, when it shall appear in proper Time, by the Pursuer's own Letters, that *Johnny Schaw* was her own Favourite Servant, whom (to use her own Words) she recommended as a little Treasure; that this Story was her own Contrivance, urged with the greatest

greatest Earnestness when she was in *Scotland*, and could not be under any pretended Influence of her Husband, then in a foreign Country?

It is also somewhat remarkable in the Libel, at the Foot of *p. 12.* and Beginning of the 13th, wherein it is said, "That the Com-
" plainer, who, during the whole Time that she lived with Sir
" *John*, had not the Liberty of either writing or receiving a Letter
" which was not read by him, took the first Opportunity, and
" wrote to *Scotland*, explaining, that the several Letters wrote
" from *Portici* near *Naples*, relative to the Companion and Dog,
" had been all of them wrote by Sir *John's* Direction, and in obe-
" dience to his Orders; but at the same time earnestly intreating,
" that fair Means should be yet used; and expressing an ardent
" Hope, that Sir *John* might yet be brought to a right Way of
" Thinking."

Now, after the former Usage she sets forth in her Libel to have met with, which if true, was really barbarous and inhumane; and the Story of *Johnny Schaw* and the Dog, if true, absolutely ridiculous, and below the Degree of a Changeling; it was a great Degree of Faith in the Lady, that her Hopes should have been so ardent, that Sir *John* would yet be brought to a right Way of Thinking.

In a word, with Submission, the Libel is so full of Inconsistencies and Incredibilities, that it is needless to insist any further upon it; for there is no Person that reads it with any Attention, but must discover them.

The Defences have fairly stated the Course of the Pursuer's Behaviour towards the Defender; which is so far from being exaggerated, that they are even far short of the Truth; as will appear in due Time.

The Answers to these Defences resolve either into a total Denial of them, or in disguising the Truth of them, so as to explain them away. But it is wrong in the Answers, throughout several Parts of them, in support of the Pursuer's Allegations, to appeal to Proof already adduced; since it has been above noticed how that Proof was taken; and no Reliance can be had upon Proof which is nei-

ther disclosed nor finished: For it lies sealed up by Order of the Court of Session, until the Defender shall have an Opportunity to re-examine and cross-question the Witnesses.

The Answers in their Entry make mention, that Sir *John* has at length thought proper to make his Appearance in this Process, insinuating as if the Defender had affected Delays. Which Insinuation is extremely unjust: For Sir *John* made his Compearance immediately upon his Arrival from abroad, and the Process was hurried on in an unprecedented Manner, before he could have an Opportunity of being advised, that such a Process was called against him: Which Precipitancy induced Sir *John*'s Friends to apply and procure from the Court of Session the Order above mentioned.

The Answers observe, that from the Account that both Parties give of the uncomfortable Life they led together, a Separation, either legal or voluntary, was a necessary Expedient; and pretend to blame the Defender for having given Occasion to the legal Method being taken, by neglecting to agree to a voluntary one.

But nothing can be more unjust than this Reflexion: For it is well known, that Sir *John* proposed a voluntary Separation when they were abroad together; and the Pursuer well knows, that she has attempted to bring some Proof of this, as one of the Circumstances amongst others of the Defender's Maltreatment: Although she knows too, that this was the Certification, and none other attended Sir *John*'s Proposal, to wit, That a Separation would be inevitable, unless the Pursuer brought the third Person, some Friend of her own; which, she has acknowledged, Sir *John* proposed to live in their Family, so as to be able to judge of their Conduct and Behaviour; without which indeed he had Reason to be afraid of keeping Family with the Pursuer: And the Event has shewn his Apprehensions were not groundless.

Sir *John* was always of Opinion, under the unlucky Circumstances of the Pursuer's Conduct, a voluntary Separation was the most prudent Method that could be taken to avoid the Misfortune of exposing the Miseries of domestick Life to the World: And had it not been for the grossest Aspersions and Defamations industriously propagated

propagated to render his Character odious, there was no Expedient he would have been so fond of, as accommodating Matters in a private Manner. But the Conduct of the Pursuer and her Advisers rendered this impossible, unless he had made a Sacrifice of his Honour and Reputation.

The Answers, in *p. 3.* say, That a voluntary Separation was the Subject of repeated Communings amongst the Friends of both Sides, after the Pursuer's Return to *Scotland*; and that a voluntary Separation, and settling a reasonable Aliment upon the Lady, was a necessary Expedient.

It is very true, that there were such Communings between Friends; but then it was impossible that the Terms could be settled and executed, without the Defender's having been advised of them abroad, or Time given till he came home; and before either of these happened, the Defender was defamed in the Manner above mentioned, and this Process hurried on; which of Necessity gave a Stop to all private Accommodation.

The Answers, in the End of *p. 3.* affirm, That it must appear affected in Sir *John*, to pretend a Surprise in being welcomed and saluted with this Process upon his Return to his Country; when, as the Answer says, it was notorious, that several Months before the Process, and in the View of it, he had transmitted from abroad, to a Relation of his own, a Memorial of above thirty folio Pages, containing a minute Detail of the Pursuer's Conduct towards him.

It is indeed true, that Sir *John* did transmit a Letter to a Friend and Relation of his own in this Country, a Person of known Honour and Prudence, communicating to him in Secrecy the Misfortunes of his conjugal Life; but it is utterly calumnious, that such was transmitted in View of this Process; for at that Time the Defender knew of no such Process being intended.

The Answers, in *p. 4.* seem to be at a Loss what can be Sir *John's* Motives in defending against this Process; and then comes over the old String again, that a voluntary Separation would have been more prudent and expedient.

The Defender has once and again declared what his Motives are in

in defending against this Process, namely, That the most odious and gross Calumnies raised and propagated against him by the Pursuer and her Advisers, made it absolutely necessary for him so to do in Defence of his Honour and Reputation: For had Matters been transacted in a prudent and discreet Way, and that Load of Calumny and Aspersions spared, this Process needed never to have been heard of, nor the Misfortunes of the Family been made the Tale and Subject of common Conversation.

The Respondent, in her Answers, is pleased to criticise upon an Expression in the Defences; wherein it is said, that the Defender had unluckily discovered that he was attacked with a Disease; and would have it, that the Discovery was a lucky Circumstance, and that the only unlucky one was the contracting the Disease.

It is humbly thought, that such little Observations, and playing with Words, might have been spared in a Process of this kind; especially that the Criticism is extremely unjust: For it is believed, it will be found to be a very proper Expression, that it is an unlucky Circumstance for a Person to discover that they are attacked with a severe Disease; for it surely would have been a lucky Circumstance that no such Disease had appeared; and therefore the discovering one's self to be attacked with it, must be an unlucky Circumstance.

It is needless to follow the Answers through that Part of them touching the Marriage-settlements, and which Side of the Friends it was that prompted the Marriage, because these Points are not indeed very material in the present Process; yet what is said of them in the Defences, did necessarily proceed from the Pursuer's own Libel; and, if it had not been so, might possibly have been overlooked by the Defender, who believes the advantageous Views are pretty well known to the World, although the Answers would shade them over, with telling the former Relation of the Parties. And the Defender does aver, that that Matter stands truly stated in his Defences, and, upon Examination, will come out so. And though it may be true, that the Defender's Mother, a Party contracting, advised with Counsel touching his Marriage-settlements;

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yet it is certain, that he committed the framing of them entirely to the Pursuer's Friends and Advisers; and Time will discover whether they are framed with an equal View to the two principal contracting Parties.

The Answers, in *p.* 10. in answer to the third Article of the Defences, affirm, That the Pursuer's having accompanied Sir *John* in his Journey abroad immediately after the Marriage, was of mutual Consent. But indeed the Truth of the Matter is, that the Proposal came from the Lady and her Friends; for Sir *John* foresaw that such a Journey must have been troublesome to her, especially under his Circumstances of Health: And had argued so much against it, that the Pursuer's Friends agreed to the Defender's having a Gentleman in the Army his Companion to go with him; who accordingly wrote to his Colonel for Leave. But, in the Interim, when the Gentleman was in the Country to prepare himself for his Journey, the Pursuer, by her Friends, and she herself told Sir *John*, that she could not live, if she did not go along with him, with several other strong Expressions to that purpose; which made it impossible for Sir *John* decently to refuse; and thereby the Gentleman's kind Offer was set aside: And, when this Resolution was taken, Sir *John*, at the Lady's Suggestion, asked, that Miss *Cathcart* her Sister might be allowed to go along with her.

The Pursuer's Sullenness and bad Humour broke out very early after the Journey, and was carried on in the Manner set forth in the Defences, notwithstanding of what is said in the Answers; as will be proved from convincing Evidence, and where Veracity cannot be suspected, nor the smallest partial Favour towards the Defender supposed.

The Answers entirely disguise what is charged in the Defences of her Conduct at *Lisbon*, which indeed was the most desperate and surprising that possibly could be; and the Answers would have it, that the Pursuer's Abstinence from Food was not the Effect of frantick Rage, but the Effect of Indisposition: But this Explication of the Matter ill agrees with the other Circumstances that are openly known, and will be proved, that the Pursuer declared, that the

Abstinence from Food was too slow a Way of dying, and therefore threatened to make away with herself in one or other of the different Shapes mentioned in the Defences.

The Answers partly deny, and partly explain away what is set forth in the Defences, as to the Outrage and Abuse committed by the Pursuer at *Pisa*; and would have it, that all that happened there was, that the Pursuer, being offended at Sir *John's* Conversation, as reflecting upon her Friends and Relations, rose suddenly from the Table, and accidentally pulled over the Cloth, with the Knives and Forks that were upon it.

Affirmations and Denials are fruitless Things in a Process; Proof only must determine the Truth. But it is not very natural to suppose, according to the Respondent's Account of the Matter, that a Lady, rising in any tolerable decent Manner from a Table, should pull over the Cloth, and all the Implements that are upon the Table. But as to this Particular, the Answer takes no Notice of the other Circumstance, of her falling foul upon her Sister, and her giving Sir *John* a Box on the Ear, upon his interposing; nor does not so much as seem to deny that, but would fondly take Advantage of the Acknowledgment, that the Defender upon this gave the Pursuer a Push from him, which made her strike against a Chair, and bleed herself.

But as the Fact is, that upon this Occasion the Pursuer behaved in the most furious and outrageous Manner, both against her Sister and the Defender, in the Manner set forth in the Defences, and after having abused her Sister, upon Sir *John's* Interposition, her having clinched her Fist, and given him a Box on the Ear; if, after all this Behaviour, the Pursuer thinks to take any Advantage of the Defender's Acknowledgment, that he gave her a Push from him, which casually was attended with the Consequences mentioned in the Defences, the Pursuer is left at full Liberty to make the most of it she can.

As to what is mentioned, *p.* 16. of the Answers, to what is called *Article 7th* in the Defences, That it is hardly probable that the Lady should have wrote Letters to her Friends, to surrender her

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Portion to Sir *John* by way of Credit abroad, otherwise than by Compulsion from Sir *John*: That Matter has been fully explained in the Defences, that the Lady was subject to strong Transitions of Temper; and it was after a furious Fit of Rage, that she became all Complacency and Repentance, confessed her Faults, and vowed Amendment; and that to shew her Inclination to serve him, as she had Influence with her Friends, she would procure up her Portion of *L. 2000*, and get it remitted to Sir *John* by way of Credit. This he was willing should be done, not with a View of raising the Money, but by a larger Credit, to be intitled to more Respect in a foreign Country, as is usual with Travellers. With this View he agreed to the Pursuer's writing to her Friends upon this Subject.

It is a strange Turn that is given in the following Part of the Answers, as if it had opened a large Field of Sir *John*'s Abuse and Maltreatment of her, because she had not wrote for a Lady of her Relations or Acquaintance, to come over and stay with her in place of Miss *Cathcart*. It must be obvious, that Sir *John*'s having made such a Request of her, must have been chiefly for her Conveniency, that she might not be alone in a strange Country; and that, some of her own Friends and Relations residing with her, Sir *John* was willing to submit to their Observation his Conduct and Behaviour towards the Lady: And if she would not comply with this Request, which was chiefly for her own Benefit, it is not very natural to suppose, that this Circumstance should have occasioned so much Abuse and Maltreatment to her. As to what is mentioned in this Part of the Answers, as if the Defences carried an Insinuation against what was swore by the *Abigails*; the Defences could intend no such Insinuation: For the Defender has not had Access to know what they swore; nor did the Defender intend to characterize any body under that Description, other than such as are often so described, *viz.* Ladies Servant-women. And Sir *John* is under little Concern what these may have swore; for he is confident that he will confirm his Allegations by such convincing Evidence, as cannot be discredited or redargued by the Testimony of Servant-women.

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As to what is mentioned of the Improbability of the Lady's going into a Convent, otherwise than to avoid bad Usage, or by Compulsion of Sir *John*; that Matter has also been explained in the Defences, That Sir *John* was exceeding averse to it; and that it was only a Whim of her own, to pave the Way for a Pretence of bad Usage; and, above all, to avoid some of her Friends being sent over to reside with her, to whose Observation she was unwilling, it would seem, to expose her Conduct and Behaviour; which, she well knew from her former Conduct, would not stand the Test of any Person of Discretion: Sir *John* was therefore at length persuaded to comply with this Measure, so as he might live in Peace and Quiet, and have an Opportunity of perfecting his Cure; and therefore, since it was her fixed Inclination, the Defender provided her in one; not such, or at so mean an Allowance as is mentioned in the Answers, but in one of the best in *France*, and where Ladies of the best Condition in that Country go into.

As to what is mentioned in the Answers to Article 9. of the Defences, with respect to her Behaviour upon the 29th of *April*, the Matter is fairly stated in the Defences upon that Head. And it is certain, that her Pretence of Danger, and for that Cause her making her Elopement, was mere Affectation and Whim: For at that Time Sir *John* was so bad, that he was confined to his Room, under Mercury, and often to his Bed, except that he stepped out to the Yard, to the great Danger of his Life, to see if, by any Intreaty, she could be persuaded to come into the House. And it is not true, that she went off either without Shoes, or without Money in her Pocket; for that it is certainly true, she had a Chair and Chairmen ready in her View to have served her to what Place she pleased, if she had not acted at the Time with other Views, now pretty evident. And as to her going into the Convent at *Montauban*; the Defender knows nothing of the *French* King's Authority in the Matter, further than what was impetrate by herself, on false Pretences, from the Intendant of the Province; which, it is well known, passes in Course on such Applications in that as in other Countries, where Applications are made to Judges on specious Pretences. And
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this is what the Pursuer calls the King's Authority, obtained in the Space of an Hour ; although *Montauban*, where she then was, was distant from the King above four hundred Miles. And it may be true, that this Convent at *Montauban* is of the meaner sort, and of such a kind as in the Answers is unfairly ascribed to that of *Thoulouse*, wherein she first went.

As to the Method of Proof to be taken in this Process, no doubt the Court will direct it to be taken in the usual Way. And the Defender will heartily agree to every Method that may promote its being taken fairly and candidly ; for, if that is the Case, he is no ways afraid of the Consequences.

The Defender having thus replied to so much of the Answers as he is advised to be material to be answered to, he hopes, in the Event, notwithstanding the Impressions given by the Pursuer's taking the Start of him, to make it appear, that the Libel raised against him is the most scandalous and malicious that perhaps ever was raised ; and that, instead of his abusing or maltreating the Pursuer, he has met with from her the most abusive and vexatious Treatment that perhaps any unfortunate Man ever bore in so short a Space : For when Persons not only suffer their bad Humour and Caprice to go to such Height of Rage as the Pursuer often suffered her's to go, but even openly declare, as the Pursuer did upon several Occasions, that she would make it her Business to plague the Defender ; which Threats she took care fully to execute upon all Occasions, especially when the Defender was under the greatest Sickness and Distress : it is easy to figure what a miserable Situation the Defender must have been in ; and yet nevertheless he will also make it appear, that, to avoid the exposing of the Pursuer's Character to the World, he bore all this Usage with all the Patience that could well be expected ; and that, instead of abusing, far less beating the Pursuer, a Thing he abhors the Imputation of, he never proceeded so much as to one Act of Austerity, but when it became absolutely necessary, in order to save his Character, and redress the highest Degree of Insolence and Outrage.

In respect whereof, &c.

J. A. GRAHAM

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